IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 949 OF 2003

IN

SUM. SUIT NO. 1879 OF 2003

Samumil Jhaveri & Anr. .. Plaintiffs.

vs.

Dhiren K. Jhaveri

& Ors. .. Defendants.

Mr. Milind Vasudeo i/by Daphtary Ferreira & Divan for the plaintiffs.

Mr. S.D. Mogre for defendants.

CORAM : S.U.KAMDAR, J.

DATE : 24th August, 2005.

P.C.

. In respect of the very same indemnity bond a suit was filed against the company being Summary Suit No. 499 of 2001 and a Summons for Judgement being No. 398 of 2001 was taken out. In the said suit an unconditional leave to defend was also granted by observing as under :-

> "It appears that there is no agreement to pay interest, except the documents at Exh. C-1 and C-2, which are indemnity bonds. The

> authenticity of those documents are seriously in dispute. The Defendants are denying the signature on the indemnity bonds are genuine. They are also contending that on the date on which thee indemnity bonds were supposed to have been signed, the persons concerned were not the Directors of the Defendant/company. Thus, it prima facie appears that there is no agreement to pay interest between the parties on the amount of Rs. 1 lakh, which was advanced as a loan. Therefore, the part of the claim made in the suit may not be triable in the summary jurisdiction of this Court."

2. On the very same bonds now the suit is filed against the directors in their personal capacity. Once the aforesaid observation is made by the learned Single Judge in respect of the authenticity of the said document, then it is obvious that triable issues are made out since the present suit is also on the very same document. In the aforesaid circumstances, unconditional leave to defend.

3. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from today. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be

on Board of the learned Judge taking Commercial Causes.